THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.33752 of 1997

Dated: 13.04.2007

Between:

S.C. Jeswal S/o late Sri Pyarelal

.....
PETITIONER

AND:

Central Warehousing Corporation rep., by
its Managing Director and another.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.33752 of 1997

ORDER:

Aggrieved by the resolution of the Board of Directors of the Central Warehousing Corporation, dated 14.08.1992, as communicated to the petitioner vide proceedings dated 19.11.1997, the present writ petition is filed.

Facts, in brief, are that the petitioner joined the Central Warehousing Corporation as a Section Officer on 22.02.1969. He was promoted to the post of Assistant Engineer, and thereafter as an Executive Engineer on 16.05.1978. He was issued a charge memo dated 08.05.1986, and thereafter, vide proceedings dated 01.05.1987, he was imposed the punishment of reduction of pay by

six stages in the time scale of pay for a period of two years with immediate effect. It was also ordered that the reduction would have the effect of postponing the petitioner's future increments of pay. Aggrieved thereby, the petitioner preferred an appeal and the appellate authority, by order, dated 02.05.1991, set aside the punishment imposed by the disciplinary authority in its order dated 01.05.1987. Thereafter, the Board of Directors of the Central Warehousing Corporation examined the matter in detail and held that there was no procedural deficiencies in the conduct of the enquiry, but there was definite lapse on the part of the petitioner in so far as he did not exercise adequate care while certifying the bills for payment on the basis of relevant entries made by his subordinates in the basic register. The Board, after taking all facts into consideration, decided that a penalty of stoppage of increment for one year without cumulative effect be imposed on the petitioner. Aggrieved thereby, the present writ petition.

While Dr. P.B.Vijaya Kumar, learned counsel for the petitioner, would raise several contentions, the question which necessitates examination first is with regards maintainability of the writ petition itself.

Sri G.Ramachandra Rao, learned Standing Counsel for the Central Warehousing Corporation, has raised a preliminary objection to the maintainability of the writ petition on the ground that no part of the cause of action has arisen within the territorial limits of this Court. Learned counsel would submit that when the writ petition came to be filed on 17.12.1997, the petitioner was working as an Executive Engineer in the Central Warehousing Corporation Circle Office at Kolkata, that both the disciplinary authority and the appellate authority are located at New Delhi and

that the Board of Directors of the Central Warehousing Corporation (Reviewing authority) also function from New Delhi. Learned counsel would submit that since the competence of the Board of Directors, reviewing the order of the appellate authority in setting aside the punishment imposed on the petitioner by the disciplinary authority is in issue in this writ petition on several grounds, and since the order was passed by the Board of Directors at New Delhi and communicated to the petitioner working at Kolkata, no part of the cause of action, either wholly or in part, arose within the territorial jurisdiction of this Court, and in view of the embargo under Article 226 (2) of the Constitution of India, the writ petition is liable to be dismissed *in limine*.

Before examining the rival contentions, it is necessary to refer to Article 226(2) of the Constitution of India, which reads thus:

> (2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

Regulation 69 of the Central Warehousing Corporation Staff Regulations, 1986, relates to review and reads thus:

> "Notwithstanding anything contained in these regulations, the reviewing authority as specified in the Appendix.I may call for the records of the case within six months of the date of the final order and after reviewing the case pass such order thereon as it may deem fit.
>
> Provided that if the enhanced penalty which the reviewing authority proposes to impose, is a major penalty specified in clauses (e), (f), (g), and (h) of regulation 59 and an inquiry as provided under

> regulation 61 has not already been held in the case, the reviewing authority shall direct that such an inquiry be held in accordance with the provisions of regulation 61 and thereafter, consider the record of the inquiry and pass such order as it may deem proper. If the appellate authority decides to enhance the punishment but an inquiry has already been held in accordance with the provisions of regulation 61, the reviewing authority shall issue show cause penalty should not be imposed upon him. The reviewing authority shall pass final order after taking into account the representation, if any, submitted by the employee."

When the impugned order in review was passed by the Board of Directors on 14.08.1992, the petitioner was working at Mumbai and on 19.11.1997, when a copy of the minutes of the Board of Directors was communicated to the petitioner, the petitioner was working at Kolkata. Both Mumbai and Kolkata are beyond the territorial limits of this Court. It is also not in dispute that the disciplinary authority, appellate authority and the reviewing authority are all located at New Delhi, which is also situated outside the territorial limits of this Court.

Dr. P.B.Vijay Kumar, learned counsel for the petitioner, would contend that even if a fraction of cause of action has arisen within the territorial limits of this Court, this Court would have jurisdiction to entertain and adjudicate the writ petition on merits. Learned counsel would contend that the incident, which formed the basis of the charge memo, took place in Andhra Pradesh, the order of the disciplinary authority was passed when the petitioner was working in Andhra Pradesh and this Court has territorial jurisdiction to entertain the writ petition and adjudicate the lis on merits. He would rely on ***Om prakash Srivastava v. Union of India***[1] and ***Navinchandra N.Majithia v. State of Maharashtra***

[2].

Sri G.Ramachandra Rao, learned Standing Counsel for the respondent-Warehousing Corporation, on the other hand, would submit that the petitioner questions the competence of the reviewing authority in, suo motu, initiating review proceedings against the petitioner herein. Learned counsel would submit that since the questions raised in this writ petition relate to competence of the reviewing authority to review the order passed by the appellate authority, and since the reviewing authority is located at New Delhi, and the petitioner, during the period when the reviewing authority had passed the order dated 14.08.1992, setting aside the order of the appellate authority setting aside the order passed by the disciplinary authority, was working at Mumbai, and when the resolution of the Board of Directors was communicated to the petitioner vide proceedings dated 19.11.1997 was working at Kolkata, and both the places are located beyond the territorial limits of this Court, no part of cause of action can be said to have arisen within the territorial jurisdiction of this Court. Learned counsel would place reliance on ***Pawan Kumar Singh v. Union of India***[3].

While a Mandamus can be issued against authorities, even if they are located beyond the territorial limits of the High Court, exercise of such power to issue writs, including that of a Mandamus, would arise only when the cause of action, whole or in part, arises within the territorial limits of the High Court exercising jurisdiction. It is only if the petitioner is able to establish that the cause of action, either in whole or in part, has arisen within the territorial limits of this Court, would this Court be justified in

exercising jurisdiction and adjudicating the matter on merits.

The question, which necessitates examination, is whether the "cause of action", even in part, has arisen within the territorial limits of this Court. Cause of action has been held, in a catena of judgments, to be a bundle of facts necessary for the petitioner/plaintiff to establish in order to be granted the relief sought for. I n ***Om prakash Srivastava***[1] the Supreme Court observed:

> "… The question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial limits of any High Court has to be decided in the light of the nature and character of the proceedings under Article 226 of the Constitution. In order to maintain a writ petition, a writ petitioner has to establish that a legal right claimed by him has prima facie either been infringed or is threatened to be infringed by the respondent within the territorial limits of the Court's jurisdiction and such infringement may take place by causing him actual injury or threat thereof.
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> Two clauses of Article 226 of the Constitution on plain reading give clear indication that the High Court can exercise power to issue direction, order or writs for the enforcement of any of the fundamental rights conferred by Part III of the Constitution or for any other purpose if the cause of action wholly or in part had arisen within the territories in relation to which it exercises jurisdiction notwithstanding that the seat of the Government or authority or the residence of the person against whom the direction, order or writ is issued is not within the said territories (ONGC v. Utpal Kumar Basu ((1994) 4 SCC 711).
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> By "cause of action" it is meant every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, a bundle of facts, which it is necessary for the plaintiff to prove in order to succeed in the suit (Bloom Dekor Ltd. V.subash Himatlal Desai ((1994) 6 SCC 322).
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> In a generic and wide sense (as in Section 20 of the Civil Procedure Code, 1908) "cause of action" means every fact, which it is necessary to establish to support a right to obtain a judgment. (Saanandam Bhadram v. Madhavan Sunil Kumar ((1998) 6 SCC 514: 1998 SCC (Crl) 1471.
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> It is settled law that "cause of action" consists of a

bundle of facts, which give cause to enforce the legal inquiry for redress in a court of law. In other words, it is a bundle of facts, which taken with the law applicable to them, gives the plaintiff a right to claim relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action would possibly accrue or would arise (South East Asia Shipping Co.Ltd. V. Nav Bharat Enterprises (P) Ltd. (1996) 3 SCC 443).

The expression "cause of action" has acquired a judicially settled meaning. In the restricted sense "cause of action" means the circumstances forming the infraction of the right or the immediate occasion for the reaction. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but also the infraction coupled with the right itself. Compendiously, as noted above, the expression means every fact, which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary to prove each fact, comprises in "cause of action" (Rajasthan High Court Advocates' Assn. V. Union of India (2001) 2 SCC 294).

The expression "cause of action" has sometimes been employed to convey the restricted idea of facts or circumstances which constitute either the infringement or the basis of a right and no more. In a wider and more comprehensive sense, it has been used to denote the whole bundle of material facts, which a plaintiff must prove in order to succeed. These are all those essential facts without the proof of which the plaintiff must fail in his suit (Gurdit Singh v. Munsha Singh (1977) 1 SCC 791).

The expression "cause of action" is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a court or a tribunal; a group of operative facts giving rise to one or more bases of suing; a factual situation that entitles one person to obtain a remedy in court from another person. In Stroud's Judicial Dictionary, a "cause of action" is stated to be the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which if traversed, the plaintiff must prove in order to obtain judgment. In Words and Phrases (4th Edition) the meaning attributed to the phrase "cause of action" in common legal parlance is existence of those facts, which give a party a right to judicial interference on his behalf (Navinchandra N.Majithia v. State of Maharashtra ((2000) 7 SCC 640 : 2001

SCC (Crl) 215).

In Halsbury's Laws of England (4th Edition) it has been stated as follows:

" 'Cause of action' has been defined as meaning simply a factual situation, the existence of which entitles one person to obtain from the court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. 'Cause of action' has also been taken to mean that a particular act on the part of the defendant which gives the plaintiff his cause of complaint, or the subject-matter of grievance founding the action, not merely the technical cause of action….."

It is only if a factual situation exists, which entitles a person to obtain from the Court a remedy against another person, can "cause of action" be said to have arisen.

In the present case, the misconduct held established against the petitioner or the findings recorded in this regard by the enquiry officer or the disciplinary authority are not in issue. The petitioner questions the competence of the Board of Directors in exercising its powers under Regulation 69 of the Regulations to review the order of the appellate authority. As such, the fact that the alleged misconduct is said to have been committed within the State of Andhra Pradesh or that the petitioner was working within the State, when the order of the disciplinary authority came to be passed, is of no consequence. It is only the order of the reviewing authority, which is in issue in this writ petition, and since the impugned order was passed by the reviewing authority at New Delhi and a copy thereof was served on the petitioner at Kolkata, both of which are beyond the territorial jurisdiction of this Court, no part of the cause of action can be said to have arisen within the territorial limits of this Court.

In Navinchandra N.Majithia[2] the Supreme Court held:

> " …"Cause of action" is a phenomenon well understood in legal parlance. Mohapatra J. has well delineated the import of the said expression by referring to the celebrated lexicographies. The collocation of the words "cause of action wholly or in part arises" seems to have been lifted from Section 20 of the Code of Civil Procedure, which section also deals with the jurisdictional aspect of the Courts. As per that section the suit could be instituted in a Court within the legal limits of whose jurisdiction the "cause of action wholly or in part arises". Judicial pronouncements have accorded almost a uniform interpretation to the said compendious expression even prior to the Fifteenth Amendment of the Constitution as to mean "the bundle of facts which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court."
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> In Read V. Brown (1888) 22 QBD 128 Lord Esher M.R. adopted the definition for the phrase "cause of action" that it meant "every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved…."

The Supreme Court, in ***Navinchandra N.Majithi*** [2], noted that in the case before it, large number of events had taken place at Bombay in respect of the allegations contained in the FIR registered at Shillong and that if the averments in the writ petition were correct, a major portion of the facts, which led to the registration of the FIR, had taken place at Bombay. Since the cause of action in part was held to have arisen within the territorial limits of Bombay High Court, the Supreme Court set aside the order of the Division Bench and held that the Bombay High Court had jurisdiction to entertain the writ petition. The said judgment has no application to the facts of the present case, inasmuch as no part of the cause of action has arisen within the territorial limits of the High Court of Andhra Pradesh.

In Pawan Kumar Singh[3], this Court held that this Court did not have territorial jurisdiction to entertain the writ petition as no part of the cause of action had arisen within the territorial limits of the State of Andhra Pradesh. Since, in the present case also, no part of the cause of action has arisen within the State of Andhra Pradesh, the writ petition filed before this Court is not maintainable and the same is liable to be dismissed. It is made clear that the writ petition is being dismissed only on the ground that no part of the cause of action has arisen within the territorial limits of the State of Andhra Pradesh and, since the validity of the order of the reviewing authority has not been examined on merits, this order shall not preclude the petitioner from availing such other remedies as are available to him in law. No costs.

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[1] (2006)6 SCC 207

[2] AIR 2000 SC 2966

[3] 1995(2) An.W.R. 178